

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHELLE LOSCALZO,

Plaintiff,

- against -

NEW ROC HARLEY DAVIDSON AND BUELL,  
INC.

Defendant.  
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: Case No.: 07 CIV 3046 (SCR)

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: ANSWER  
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Defendant, NewRoc Motorcycles, LLC, incorrectly sued herein as New Roc Harley Davidson and Buell, Inc. ("NewRoc"), by and through its attorneys Putney, Twombly, Hall & Hirson LLP, as and for its Answer to Plaintiff's Complaint ("Complaint"), states as follows:

1. Denies the allegations contained in Paragraph 1 of the Complaint.
2. Denies the allegations contained in Paragraph 2 of the Complaint, except admits that Plaintiff purports to proceed as stated therein.
3. Denies the allegations contained in Paragraph 3 of the Complaint, except admits that Plaintiff purports to proceed as stated therein.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.
5. Denies the allegations contained in Paragraph 5 of the Complaint, except admits that NewRoc is a New York Corporation.
6. Admits the allegations contained in Paragraph 6 of the Complaint.
7. Denies the allegations contained in Paragraph 7 of the Complaint.
8. Denies the allegations contained in Paragraph 8 and subparagraphs 8(a), 8(b),

8(c), 8(d), 8(e) , 8(f), 8(g) 8(h), 8(i) and 8(j) of the Complaint.

9. Denies the allegations contained in Paragraph 9 of the Complaint.

10. Denies the allegations contained in Paragraph 10 of the Complaint.

11. Denies the allegations contained in Paragraph 11 of the Complaint.

12. Denies the allegations contained in Paragraph 12 of the Complaint.

13. Denies the allegations contained in Paragraph 13 of the Complaint, except admits that Plaintiff's employment was terminated due to her poor job performance.

14. Denies the allegations contained in Paragraph 14 of the Complaint.

15. Denies the allegations contained in Paragraph 15 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint.

17. Denies the allegations contained in Paragraph 17 of the Complaint.

18. With respect to the allegations contained in Paragraph 18 of the Complaint, repeats and realleges each and every response to Paragraphs 1 through 17 of the Answer as if fully set forth herein.

19. Denies the allegations contained in Paragraph 19 of the Complaint.

20. With respect to the allegations contained in Paragraph 20 of the Complaint, repeats and realleges each and every response to Paragraphs 1 through 19 of the Answer as if fully set forth herein.

21. Denies the allegations contained in Paragraph 21 of the Complaint.

**AS AND FOR A FIRST DEFENSE**

22. The Complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND DEFENSE**

23. The Complaint is barred, in whole or in part, to the extent that it was not filed within the period of time mandated by the applicable statutes of limitations.

**AS AND FOR A THIRD DEFENSE**

24. Any and all actions taken by NewRoc were based on legitimate, nondiscriminatory reasons unrelated to Plaintiff's sex and unrelated to any invocation by Plaintiff of rights arising under federal, state or local law.

**AS AND FOR A FOURTH DEFENSE**

25. Plaintiff's claims are barred, either in whole or in part, to the extent that Plaintiff has failed to file a timely claim thereon with relevant administrative agencies and exhaust all necessary administrative remedies or procedures regarding such claims.

**AS AND FOR A FIFTH DEFENSE**

26. Plaintiff's claims are barred, either in whole or in part, to the extent that Plaintiff has failed to meet administrative prerequisites or conditions precedent regarding the commencement of this action.

**AS AND FOR A SIXTH DEFENSE**

27. The Complaint is barred, in whole or in part, to the extent it relies upon, or refers to claims not asserted in the Charge of Discrimination.

**AS AND FOR A SEVENTH DEFENSE**

28. Upon information and belief, Plaintiff failed to mitigate damages, if any exist, as required under the law.

**AS AND FOR AN EIGHTH DEFENSE**

29. Plaintiff's claims for relief are barred, in whole or in part, by the doctrines of waiver and estoppel.

**AS AND FOR A NINTH DEFENSE**

30. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**AS AND FOR A TENTH DEFENSE**

31. NewRoc maintains a well established "No Harassment" Policy.

32. Plaintiff was aware of NewRoc's "No Harassment" Policy.

33. Plaintiff did not utilize NewRoc's well established "No Harassment" Policy.

**AS AND FOR AN ELEVENTH DEFENSE**

34. Any damages or loss sustained by Plaintiff were caused solely by the culpable conduct on the part of Plaintiff.

35. Plaintiff is therefore not entitled to recover.

**AS AND FOR A TWELFTH DEFENSE**

36. Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

**WHEREFORE**, NewRoc demands judgment as follows:

- (i) dismissing the Complaint in its entirety;

- (ii) granting Defendant reasonable attorneys' fees, costs and disbursements incurred in this action; and
- (iii) granting such other, further and different relief as this Court deems just and proper.

Dated: New York, New York  
May 24, 2007

/s/ MED  
Mary Ellen Donnelly (MD 4936)  
**PUTNEY, TWOMBLY, HALL & HIRSON LLP**  
521 Fifth Avenue  
New York, New York 10175  
(212) 682-0020

*Attorneys for Defendant, NewRoc  
Motorcycles, LLC*

**CERTIFICATE OF SERVICE**

The undersigned, a member of the Bar of this Court, hereby certifies that she caused a true and accurate copy of the foregoing Answer of NewRoc Motorcycles, LLC to be served via electronic case filing and overnight mail on May 24, 2007, 2006 upon:

Jeffrey M. Bernbach  
*Attorney for Plaintiff*  
245 Main Street, 5<sup>th</sup> Floor  
White Plains, New York, NY 10601

/s/ MED  
Mary Ellen Donnelly (MD 4396)  
**PUTNEY, TWOMBLY HALL &  
HIRSON, LLP**  
*Attorneys for Defendant NewRoc  
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